IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.414 OF 2005

Ramchandra Sadashiv Shinde ..Petitioner.

Vs.

M/s.Jaslok Hospital &

Research Center & Ors. ..Respondents.

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Mr.Neel Helekar for the Petitioner.

Mr.V.P.Vaidya for Respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

7th March, 2005.

P.C. :

1. Rule, made returnable forthwith by consent of counsel. Counsel appearing on behalf of the Respondent waives service. By consent, taken up for hearing and final disposal.

2. The Labour Court has rejected a reference to adjudication under Section 10 of the Industrial Disputes Act, 1947 on the ground that it was not

maintainable in view of the provisions of Section 59 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

3. The Petitioner joined the services of the Respondent as Hamal on 1st January, 1978. On 6th January, 1998 it is alleged that the security officer of the Respondent called upon the Petitioner to accompany him to the police station and on doing so the Petitioner along with five other employees was detained and interrogated for a theft which had allegedly taken place on 4th January, 1998. Upon his arrest, the Petitioner was released on bail on 13th January, 1998. On 26th February, 1998 the Petitioner along with his colleagues filed a complaint of unfair labour practices under item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, 1971, and the grievance therein was that though the workmen had reported for duties they had not been allowed to work. The relief which was therefore sought was that the Respondent be directed to allow the workmen to resume work with full wages from 24th January,

1998. Subsequent thereto on 5th March, 1998, the services of the Petitioner came to be terminated . A demand letter was issued by the Petitioner on 16th March, 1998 and a dispute was raised before the Assistant Labour Commissioner under the Industrial disputes Act, 1947. The industrial dispute was referred for adjudication under Section 10 of the Industrial Disputes Act, 1947. The Labour Court by its order dated 29th October, 2003 dismissed the reference, in view of the provisions of Section 59 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

4. Section 59 of the Act provides as follows:

> "59. Bar of proceedings under Bombay or Central Act :- If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or, as the case may be, the Bombay Act; and if any proceeding in respect of any matter within the purview of this Act

> is instituted under the Central Act, or as the case may be, the Bombay Act, then no proceedings shall at any time be entertained by the Industrial or Labour Court under this Act."

5. Now there is no dispute that a proceeding in respect of a matter falling under the purview of the State Act was instituted on 26th February, 1998. Section 59, however, provides that in such a case no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or as the case may be the Bombay Act. The words "that matter" are important. In the present case, it is clear that the earlier complaint that was instituted was on the grievance of the workmen that they were not being allowed to report for work on duties. Admittedly, there was no order of termination when the earlier complaint was filed. The services of the workman in the present case came to be terminated on 5th March, 1998. The reference to adjudication was with respect to the legality and validity of the order of termination. This was clearly not a matter which forms the subject of the earlier complaint

under the 1971 Act. Hence, the provisions of Section 59 were clearly not attracted. The Labour Court has erred in dismissing the complaint as not maintainable.

6. The Petition is accordingly allowed and the order of the Labour Court dated 29th October, 2003 is quashed and set aside. Reference (IDA) 650 of 1999 shall stand restored to the file of the Fourth Labour Court at Mumbai. The parties shall appear before the Labour Court for directions on 21st March, 2005. The Labour Court shall set down the matter in accordance with the exigencies of its own work for hearing and disposal on merits. The Petition is allowed in the aforesaid terms. There shall be no order as to costs.